

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
SEVENTH REGION

CONSUMERS ENERGY COMPANY

Employer

and

CASE 7-RC-22022

UTILITY WORKERS UNION OF
AMERICA, AFL-CIO

Petitioner

APPEARANCES:

Charlotte A. Walls and Mirce Nestor, Attorneys, of Jackson, Michigan, for the Employer.
Robert Mahoney, of Hanover, Massachusetts, and Robert A. Houser, of Barnegat, New Jersey,
on brief, for the Petitioner.

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, hereinafter referred to as the Act, a hearing was held before a hearing officer of the National Labor Relations Board, hereinafter referred to as the Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record in this proceeding,¹ the undersigned finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

¹ Both parties submitted briefs that were carefully considered.

2. The Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction herein.

3. The labor organization involved claims to represent certain employees of the Employer.

4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

The Employer, a Michigan corporation, is a public utility with its general corporate office located in Jackson, Michigan. The Employer produces, distributes, and sells electrical power and natural gas service throughout most of the lower peninsula of Michigan. Petitioner is seeking to represent a unit of about 150 customer service representatives (CSRs) employed at the Employer's facilities in Saginaw and Alma, Michigan. The Employer's premier position is that the smallest appropriate unit is all 2500 non-exempt employees located in the State of Michigan and Washington, D.C.² Alternatively, the Employer posits as appropriate a unit consisting of about 323 CSRs employed in the administratively distinct entity known as the virtual call center, described more fully below.

The Employer's employees are divided into three groups: (1) 2500 to 3000 individuals exempt from the Fair Labor Standards Act (FLSA), formerly known as executive, administrative, and professional; (2) 2500 employees not exempt from the FLSA, formerly known as salaried employees - weekly, arranged in 19 job classifications performing administrative, customer service, operations, technical support, and technical functions; and (3) 3500 hourly operating, maintenance, and construction workers. For many decades, Petitioner has represented a company-wide unit of the Employer's operating, maintenance, and construction employees. There is no history of collective bargaining within the non-exempt workforce.

About 1995, the Employer substituted function for geography as its organizational principle and created four strategic business units (SBUs): corporate center, corporate services, gas, and electric. Customer services, headed by Manager Robert Jocis, is a subunit of the corporate services SBU. Jocis's customer services department is further subdivided into seven clusters, known as technology and performance solutions, resource management, customer complaints, credit and collection, employee development services, revenue acquisition, and the virtual call center at issue herein.

The virtual call center electronically links all 323 CSRs throughout Michigan in order to expedite and improve customer service. A customer desiring service or billing information will call an "800" number that operates with 667 lines around the clock. The "800" call flows into an Employer facility in Lansing. The customer hears a recorded voice ask six questions. Taking the

² The number and category of non-exempt employees stationed in Washington, D.C. were not disclosed.

customer's responses into account, a mechanism called an automatic call distributor sends the call to the next available CSR. CSRs in the virtual call center are stationed in the Michigan cities of Alma, Saginaw, Grand Rapids, Royal Oak, and Lansing, and 16 of them work from their homes. The automatic call distributor will patch a call into a line manned by any of those CSRs. The CSR responds telephonically to the customer's inquiry or concern. If the customer needs service, the CSR makes a computer entry that is channeled to a dispatch operations center, where it becomes a field employee work order. The CSR may enlist the help of supervision by pressing another key.

Each of the five call centers is staffed with from two to six team leaders, who serve as the CSRs' first line of supervision.³ Team leaders report directly to Superintendents Sharon L. Toutant, Linda M. Foley, and Andrew P. Radvansky.⁴ Currently, Toutant is responsible for Royal Oak, Foley for Alma and Saginaw, and Radvansky for Grand Rapids and Lansing. In the past, dual-facility assignments were configured differently. Superintendents answer to Customer Services Manager Jocis.

The virtual call center receives direct operational support from three other subunits in the customer services department under Jocis's charge. The staff of the technology and performance solutions group headed by Director Richard Clingerman offers technical support. The resource management group led by Karen Eldred undertakes scheduling and staffing. Employee development services provided by Director Judy Simmons's group include training and sales coaching.⁵ Quotidian management of the virtual call center is also facilitated by corporate human resource representatives outside of Jocis's customer services department. One human resource specialist is stationed in each of the five call centers, while Coleman James, a higher-ranked human resource consultant, presides over the Grand Rapids, Lansing, Alma, and Saginaw centers from his office in Grand Rapids.⁶

The superintendents of the virtual call center convene monthly with Human Resource Consultant Coleman James, Resource Management Consultant Karen Eldred, Employee Development Consultant Judy Simmons, and Heather Fambrough, a recruiter. They discuss the

³ The parties stipulated, and I concur, that team leaders are statutory supervisors by virtue of their authority, inter alia, to discipline employees. The team leaders are: V. Kaye Price and Andrea K. Kitchen (Royal Oak); Shelly A. Chambers, Karen D. Malenfant, Tom C. Harvey, Anita E. Jackson, Dawn M. Lewis, and Alice L. Beardslee (Saginaw); Dave R. Burdo, Barb J. Kusmierski, Lou Ann V. Mahan, Sharol A. Pominville, and Carrie A. Harkness (Alma); Arnie L. Cardosa, Greg D. Kuklewski, and Lorinda S. Tammens (Grand Rapids); and Pam J. Harke, Jenine B. Smith, Debi L. Long, Deanna S. Torres, and Vicki L. Terrell (Lansing).

⁴ I adopt the parties' stipulation that the superintendents possess numerous indicia of supervisory authority enumerated in Section 2(11) of the Act.

⁵ The parties stipulated, and I agree, that Karen Eldred and Judy Simmons possess statutory authority. No specific stipulation was received regarding Richard Clingerman, but his testimony and the record as a whole make it plain that he shares the same status.

⁶ For reasons not explained in the record, a different corporate human resource consultant is responsible for the Royal Oak call center.

volume of calls and, based thereon, make staffing decisions. Fambrough's preliminary review of resumes and conduct of "pre-tests" yields a pool of candidates. Each applicant in the pool is interviewed by two virtual call center team leaders (or by a team leader and a sales coach). The interviewers rate the applicants on a prescribed form developed by human resources. Team leaders from each call center then gather to discuss the interviewees and make final selections. A job offer is extended to the successful candidate by the site's assigned human resource specialist.

The tasks of determining the number of CSRs that must be on duty at a given time, and scheduling them, fall to the resource management team under Karen Eldred. The operating hours of each center vary and are established by resource management.⁷ Basic shifts are also designed by resource management. Eldred receives assistance in scheduling from four workload coordinators. These are specially empowered CSRs who report directly to Eldred and are responsible for processing vacation and time-off requests. The Lansing, Alma, and Saginaw call centers each have their own workload coordinator, while Grand Rapids and Royal Oak share one. A CSR applies in advance for vacation time or other leave by electronically submitting a request to a time-off database. Assuming that the CSR is entitled to the requested leave under the terms of the Employer's guide book for non-exempt personnel, the workload coordinator grants the request if doing so does not impair the staffing level set by resource management. If sufficient time-off slots are not available, the CSR will go on a waiting list.

CSRs may create their own shifts. Normally, a "creative shift" needs the approval of a workload coordinator, but if the CSR will be working outside the work hours of any site team leader, a team leader must also approve the request. To call in absent for sickness or other emergency on the day in question, a CSR will telephone a site team leader.

Resource management determines the number of overtime hours needed. CSRs volunteer for overtime duty, which workload coordinators allocate by rotation when volunteers outstrip demand. When additional volunteers are needed, resource management pulls them from any of the call centers. CSRs may freely trade shifts on their own, with notice to the workload coordinator.

After-hours staffing problems and business emergencies are handled by that week's designated "network emergency on call" (NEOC) and "superintendent on call" (SOC) personnel. One CSR or team leader, and one superintendent or manager, respectively, serve as the entire virtual call center's NEOC and SOC agents. The nature and severity of the problem will determine who else, if anyone, the NEOC and SOC may contact.

A CSR whose performance meets certain objectively-defined expectations may transfer permanently to another call center, provided that there is adequate work space, supervision, and technology to support the move. There is discrepant evidence as to whether a permanent transfer may be effected without a posted job opening. While the record contains examples of permanent

⁷ Alma runs from 7 a.m. to 10 p.m., Grand Rapids and Royal Oak from 7 a.m. to 7 p.m., Saginaw from 7 a.m. to 11 p.m. Monday through Saturday. Lansing operates daily around the clock.

transfers of CSRs between call centers, the exact number was not quantified. On the other hand, the record reveals that temporary transfers based on CSR requests have taken place 23 times during calendar years 2000 and 2001. Workload coordinators from the affected sites work together to accomplish the transfer.

Salary ranges, benefit packages, and employment policies and procedures for non-represented employees are determined centrally by the Employer's human resource department. A salaried employee handbook outlines common conditions of employment, such as job classifications, descriptions and qualifications, leave policy, and vacation accrual. Exempt and non-exempt personnel, including CSRs, share the same basic fringe benefits. The Employer offers all of them a choice of coverage through either Aetna or selected health care providers operating in the employee's geographical area.

CSRs are evaluated annually on standard forms promulgated by the corporate human resource department. However, this appraisal form is tailored to the virtual call center and is unique to that department. Team leaders prepare the evaluations, which encompass numerical ratings and narratives. Categories are weighted in prescribed ways, yielding a final cumulative score ranging from "did not meet expectations" to "extraordinary achievement." Team leaders submit the evaluations to the call center's superintendent, who, as far as this record reveals, gives rubber-stamped approval. No one in the corporate hierarchy higher than the superintendent signs the evaluation. The salaried employee handbook states that a team leader's decision regarding a challenged performance evaluation is "final and binding."

Team leaders recommend CSRs for merit increases and promotions. There is no evidence that their recommendations in this area are ever countermanded. However, it is clear that a merit raise must be formally approved by Customer Services Manager Robert Jocis, who controls one "merit budget" affecting the entire virtual call center.

Team leaders initiate all CSR disciplinary actions. Although these actions may be in the form of a recommendation, there is no evidence that either a call center superintendent or Human Resource Consultant Coleman James independently investigates the matter. Nor, as far as the record reveals, is there a requirement that a team leader consult with higher-level management before issuing discipline of a particular severity. Non-exempt employees including CSRs have an in-house appeal process by which to contest discipline. This procedure begins with the team leader and may culminate, in the case of discharge or a statutorily based complaint, in impartial arbitration.

CSRs receive training planned and executed by the employee development staff under Consultant Judy Simmons. The lessons include sessions with sales coaches, who teach CSRs about the value-added products and services that the Employer sells, and with quality coaches, who monitor and critique CSRs' customer calls.

The salaried employee handbook contains a clause under which seniority may entitle an employee to displace a junior employee in the "same job family" in the "defined layoff area." The

meaning of this language was not explored at the hearing. In fact, the Employer's ranking managers testified that no CSR layoffs have occurred in their memory and that they are not certain what procedures would apply if such layoffs became necessary.

CSRs' personnel files are kept in the call centers in the local human resource office. CSRs' medical records are maintained centrally in a corporate human resource office, with copies at the call centers. Individual call centers track their separate expenses. However, their labor costs are charged to a single budget. As noted above, Customer Services Manager Robert Jocis controls a single merit-pay budget for all of the units in his charge.

The Saginaw and Alma facilities house employees other than the CSRs sought by Petitioner, as well may the Lansing, Grand Rapids, and Royal Oak facilities. Apart from the human resource and customer services department staffs supplying ancillary support to the virtual call center, as described above, the record does not disclose what those other employees at the five virtual call center sites do or how, if at all, CSRs interact with them. Nor does the record demonstrate any contact or interchange between CSRs and other non-exempt employees elsewhere in Michigan or in Washington, D.C.

CSRs, unlike other non-exempt employees, are subject to some policies unique to the virtual call center, such as a unique approach to time off using tokens, an educational assistance policy for part-time employees, an employee referral program and a management guide that is specific and unique to the virtual call center.

No union seeks to represent any non-exempt employees in a unit larger than that sought by Petitioner.

The Board's long-standing view is that the optimal bargaining unit in the public utility industry is system-wide. *New England Telephone & Telegraph Co.*, 280 NLRB 162 (1986). In so holding, the Board in *Baltimore Gas & Electric Co.*, 206 NLRB 199, 201 (1973), relied on the fact that the public utility industry "is characterized by a high degree of interdependence of its various segments" and that "the public has an immediate and direct interest" in the maintenance of the essential services that it provides. Thus, particularly to minimize disruptions in essential public services, the Board has been reluctant to fragmentize a utility's operations by finding less than system-wide bargaining units to be appropriate and has done so only under "compelling circumstances." In making a determination that a unit larger than that petitioned for is the only appropriate unit, the Board has relied on factors of whether there exists a high degree of functional integration of the operations; whether there is a centralization of administrative functions; whether there is a significant amount of employee interchange; and whether the employees perform similar job duties. *New England Telephone*, supra at 164; *Eastman West*, 273 NLRB 610 (1984).

The Board has been willing to find less than a system-wide unit only where "(1) there is no recent history of bargaining on a system-wide basis; (2) the proposed unit encompasses a distinct administrative or geographical subdivision; (3) the Employer invests substantial autonomy in supervisors at the unit level; and (4) no union seeks to represent employees in a larger unit."

Texas Electric Service Co., 261 NLRB 1455, 1458, fn. 13 (1982). In finding a less than system-wide unit, the Board has also considered whether the employees in the requested unit “enjoy a community of interest sufficient to make separate bargaining a feasible undertaking.” *New England Telephone & Telegraph Co.*, 249 NLRB 1166 (1980). Recently, the Board has recognized the trend toward decentralization and deregulation in the public utility industry, emphasizing that well-defined administrative segments of a public utility’s organization may constitute an appropriate, smaller than system-wide, unit. *PECO Energy Co.*, 322 NLRB 1074 (1997). The Board holds that the size of the employee complement and the expanse of the geographical area sought are not to be dispositive of unit determinations, but may be weighed as factors in a community of interest analysis. *Deposit Telephone Co.*, 328 NLRB No. 151 (July 27, 1999).

Based on the foregoing, I reject the Employer’s threshold contention that the scope of the unit must be a system-wide one of all non-exempt employees. Compelling evidence exists for finding the complement of CSRs assigned to the virtual call center to be an appropriate unit. The virtual call center, as stressed by the Employer on brief, is a distinct administrative subdivision in which the Employer invests substantial operating and supervisory autonomy. Unlike other non-exempt employees, the CSRs in the virtual call center have some unique policies and appraisal form. The record is barren of evidence that the duties of virtual call center CSRs are interlocked with those of non-exempt employees outside of the customer services department, nor is there evidence that CSRs and non-exempt employees generally have similar skills, training, or work contact. There is no recent history of system-wide bargaining involving non-exempt employees, and no union seeks to represent non-exempt employees in a larger unit. I therefore find that a unit of CSRs less than system-wide is appropriate here. *Peco Energy Co.*, *supra*; *Natural Gas Pipeline Co.*, 223 NLRB 1439 (1976); *Monongahela Power Co.*, 176 NLRB 915 (1969).

By the same token, the narrower bargaining unit requested by Petitioner cannot be reconciled with the foregoing legal principles. Segregating two facilities from the rest of the virtual call center -- even ones that at present share the same superintendent -- would unduly fragment an integrated entity. Virtual call center CSRs perform the same duties and share the identical basic terms and conditions of employment. They freely transfer among call center sites. They are supported by the same training and technology teams. Scheduling, overtime, leaves of absence, hours, and shifts are regulated centrally by resource management. I am mindful that team leaders at the respective call centers exercise a high degree of autonomy over merit pay, promotions, and discipline. However, while that factor alone may tip the scale in a different industry, it is overcome here by the strong evidence of centralization and the Board’s policy favoring public-utility units that conform to the contours of a wider administrative division.

While the Employer’s brief advanced the propriety of a unit consisting of CSRs assigned to the *virtual call center*, the parties’ positions regarding CSRs classified as quality coaches and workload coordinators were not set forth either in the record or on brief.

Quality coaches are employee development personnel classified as CSRs who monitor and evaluate CSRs’ customer calls. One quality coach is stationed in each of the Grand Rapids and

Lansing call centers; Alma and Saginaw each have two. Critiques occur both in individual meetings between quality coaches and CSRs, and in groups between quality coaches and team leaders. The six quality coaches are supervised by Employee Development Business Consultant Frank Lubis rather than by their respective sites' team leaders. The adjudicative function of the quality coaches, as well as their separate line of supervision, convince me that they do not share a sufficient community of interest to be combined with the CSRs of the virtual call center.

Workload coordinators are CSRs who perform the scheduling functions described above. One is stationed in each of Lansing, Alma, and Saginaw, and a fourth covers both the Grand Rapids and Royal Oak centers. The current workload coordinators were assigned their jobs by team leaders. However, they report not to team leaders but to Resource Management Consultant Karen Eldred, who will interview and hire workload coordinators in the future. The degree of independent authority that the workload coordinators may exercise in discharging their duties was not explored at the hearing, nor was the question of whether they perform any regular CSR work. Given the possibility, suggested but not clarified by the record, that workload coordinators may be dual function employees who handle scheduling in addition to customer calls, I shall permit the four workload coordinators to vote under challenge.

Finally, the Employer expressed a desire to include two "senior CSRs" who work in Traverse City and Lansing directly under Employee Development Consultant Judy Simmons. Simmons testified that these particular senior CSRs perform special (unidentified) projects, analyze (unspecified) reports, and help maintain the "help" system under which a CSR hits a computer key for assistance in handling a customer problem. These senior CSRs provide support to the virtual call center, but are beyond its defined administrative boundaries. On that basis, as well as the lack of evidence that their job duties are similar to those of other CSRs, I find, on community of interest grounds, that they are ineligible to vote.

5. Accordingly, based on the record as a whole, I conclude that the following employees constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:⁸

All full-time and regular part-time customer service employees, including senior customer service representatives (CSRs), CSRs I, CSRs II, CSRs III, and home CSR agents, employed by the Employer at or out of its "virtual call center" facilities in Alma, Saginaw, Grand Rapids, Royal Oak, and Lansing, Michigan; but excluding all other non-exempt employees, all exempt employees, all operating,

⁸ As the unit found appropriate herein is larger than the unit requested, the Petitioner is accorded a period of 10 days from the date of this Decision and Direction of Election in which to submit to the Regional Director for Region 7 an additional showing of interest. In the event the Petitioner does not wish to proceed with an election, it may withdraw its petition without prejudice by notice to the Regional Director for Region 7 within seven days from the date of this Decision and Direction of Election.

maintenance and construction employees, and guards and supervisors
as defined in the Act.

Those eligible to vote shall vote whether they desire to be represented for purposes of
collective bargaining by Utility Workers Union of America, AFL-CIO.

Dated at Detroit, Michigan, this 18th day of July, 2001.

(SEAL)

/s/ William C. Schaub, Jr.
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